IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 185 OF 2005

Babu Dondi Kushare & ors. ... Appellants (Ori.Defendants)

V/s

Gangadhar Tukaram Kushare ... Respondent (Ori.Plaintiff)

Mr. Amit B. Borkar with S.M. Sabrad for the appellants.

Mr. Ramesh Dubey-Patil i/by M/s. Ajay Misar & Co. for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 30TH JUNE, 2005

P.C.:

1. This is an appeal preferred against the judgment and order passed by the Addl. District Judge, Nashik dated 28.8.2002 allowing the appeal and decreeing the plaintiff's suit and thereby setting aside the order of the Civil Judge, Jr.Divn., Pimpalgaon dated 19.1.1996 dismissing the suit.

2. I have heard the learned counsel for both parties. Perused the record.

3. At the outset, it may be noted that the only

substantial question of law involved in this appeal is with regard to the proper appreciation of available evidence on record by the lower appellate Court. The dispute revolves around the location of the cattle shed and whether it was situated in the land of Gat No.77/2 legally or illegaly.

The learned Trial Judge adjudicated the issue on merit and came to the conclusion that the plaintiff had failed to prove that the cattle shed belonging to the defendants was located in his land of Gat No.77/2 unauthorisedly and, therefore, consequent reliefs were also denied.

The appeal was preferred to the District Court, Nashik. The Addl. District Judge, Nashik, after hearing both parties, came to the conclusion that the Trial Court had erred in appreciating the evidence and came to the conclusion that the available evidence on record was sufficient to show that the cattle shed belonging to the defendants was standing unauthorisedly on the land Gat No. 77/2 belonging to the plaintiff and, as such, the suit came to be decreed.

4. Initially, the learned counsel for the appellants

sought to raise the issue regarding the production of additional evidence on record in the course of hearing of the appeal by the present respondent. It appears that by application under Order 21 Rule 23 of the C.P.C. the respondent sought to bring on record the additional evidence of D.I.L.R. survey map in respect of the suit property. It was submitted that the learned lower appellate Court Judge considered that application and relied upon the documents produced at the appellate stage without giving opportunity to the appellants to rebut the evidence. However, the contents of the judgment of the lower appellate Court in para 3 makes it clear that the defendants neither filed any say to the application Exh.17 for consideration of additional evidence nor challenged the said map and in fact it consistently remained absent in the course of the appeal and, therefore, in my view, the fact that said map was taken into account by the lower appellate Court Judge cannot be faulted at this stage.

Moreover, it is also clear from the judgment itself that the lower appellate Court Judge has decided the issue regarding the consideration of the said additional evidence of survey map in favour of the plaintiff. As can be seen from the contents of para 11 of the said

judgment, the learned counsel for the appellants has submitted that the lower appellate Court erred in relying upon the discrepancies in the evidence of the present respondent ignoring the weakeness of the plaintiff's evidence. However, in this regard it must be noted firstly, that it cannot be the substantial question of law at all because the process of judicial adjudication of any dispute is made after taking into account the cumulative effect of entire evidence on record and evidence of either of the party cannot be saggregated for consideration and arriving at particular conclusion. Moreover, perusal of the judgment of the lower appellate Court also shows that, it was quite evident that the land of Gat No. 77/2 was previously land of Survey No.27/6 and it belong to the joint family and, therefore, the conclusion to the effect that the cattle shed was standing in the impugned land appears to be correct.

5. For the reasons recorded above, I hold that the lower appellate Court Judge has properly appreciated the entire evidence on record and, therefore, it would brook no interference.

In the result, the appeal stands dismissed with no order

as to costs. Consequently, the Civil Application No. 1851 of 2004 also stands dismissed with no order as to costs.

6. At this stage, the learned counsel for the appellants submits that the status-quo order earlier granted should be extended. In view of the facts and circumstances, the order of status-quo granted earlier stand continued for a period of four weeks.

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